

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-20861-CV-ALTONAGA
MAGISTRATE JUDGE REID

TRAVIS ORTEZ ANDERSON,

Plaintiff,

v.

STATE ATTORNEY OFFICE, et al.,

Defendant.

REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE

This matter is before the Court on upon a *sua sponte* review of the docket. This cause has been referred to the Undersigned for consideration and report pursuant to 28 U.S.C. § 636(b)(1)(B) and S.D. Fla. Admin. Order 2019-2. [ECF No. 2].

On February 27, 2020, the Court received from Plaintiff a Complaint filed pursuant to 42 U.S.C. § 1983 and a pleading the Clerk of Court construed as a Motion for Leave to *Proceed in forma pauperis*. [ECF Nos. 1, 3]. That same day, the Court Ordered Plaintiff to file an amended complaint and to file a new motion for leave to proceed *in forma pauperis* because both were legally insufficient. [ECF Nos. 5, 6]. Plaintiff was given until March 27, 2020 to comply.

Plaintiff filed an Amended Complaint on March 13, 2020 [ECF No. 7], but failed to file a new motion for leave to proceed *in forma pauperis*, and the time for doing so has long since expired. Pursuant to 28 U.S.C. § 1914(a), “parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise...pay a filing fee of \$350.” *See Robinson v. Raticoff*, 2019 U.S. Dist. LEXIS 61838 at *2 (S.D. Fla. Apr. 9, 2019). Further, S.D. Fla. L.R. 88.2 requires all civil rights complaints filed pursuant to 42 U.S.C. § 1983 to be filed

“together with filing fee” in the Clerk's Office. S.D. Fla. L.R. 88.2(a). A review of the record shows that Plaintiff failed to pay the fee in violation of 28 U.S.C. § 1914(a) and S.D. Fla. L.R. 88.2(a).

In the alternative, if the complaint is to be submitted *in forma pauperis*, then a plaintiff “shall submit [with the complaint] the form ‘Application to Proceed Without Prepayment of Fees and Affidavit’ ... which establishes that he or she is unable to pay the fees and costs of the proceedings.” S.D. Fla. L.R. 88.2(b). The record also shows that Plaintiff failed to file for leave to proceed *in forma pauperis* in violation of S.D. Fla. L.R. 88.2(b), despite being instructed to do so by the Court.

Plaintiff was given until March 27, 2020 to cure the deficiency, but as of this date, he has not taken any action. Thus, the case should be dismissed without prejudice so that Plaintiff may refile with the fee at a later date if he so chooses.¹

Based on the above, it is **RECOMMENDED** that Plaintiff’s Amended Complaint [ECF No. 7] be **DISMISSED** without prejudice for failure to pay the filing fee.

Objections to this Report may be filed with the District Judge within fourteen days of receipt of a copy of the Report. Failure to do so will bar a *de novo* determination by the District Judge of anything in the Report and Recommendation and will bar an attack, on appeal, of the factual findings of the Magistrate Judge. *See* 28 U.S.C. § 636(b)(1)(C); *see also Thomas v. Arn*, 474 U.S. 140, 149 (1985).

SIGNED this 13th day of October, 2020.

¹ Plaintiff was also warned that it is his “responsibility to actively pursue this case, obtain any essential discovery, file all necessary pleadings and motions and otherwise comply with all scheduling orders and prepare the case for trial. Failure to do this will probably result in dismissal of the case for lack of prosecution.” [ECF No. 4, p. 4, ¶ 11]. This provides an alternative basis for dismissal pursuant to Fed. R. Civ. P. 41(b). *See Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989) (“dismissal upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of discretion.”); [*3] *see also Martins v. Royal Caribbean Cruises, Ltd.*, Case No. 15-21124-CV-GOODMAN, 429 F. Supp. 3d 1315, 2019 U.S. Dist. LEXIS 7992, 2019 WL 246604 (S.D. Fla. Jan. 16, 2019) (collecting cases).



UNITED STATES MAGISTRATE JUDGE

cc: **Travis Ortez Anderson**
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